Supreme Court of the United States

OCTOBER TERM 1944

No. 205

IN RE CLYDE WILSON SUMMERS,
Petitioner.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF OF PETITIONER

JULIEN CORNELL,
Attorney for Petitioner,
15 William Street,
New York 5, N. Y.

ALFRED T. CARTON,
FRANCIS HEISLER,
CHARLES LIEBMAN,
Of the Illinois Bar,

CHARLES FINCH,
CLIFFORD FORSTER,
ARTHUR GARFIELD HAYS,
Of the New York Bar,
Of Counsel.

TABLE OF CONTENTS

Table of Cases Cited

Other Authorities Cited

Supreme Court of the United States

OCTOBER TERM 1944

No. 205

IN RE CLYDE WILSON SUMMERS,
Petitioner.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF OF PETITIONER

Opinion Below

No opinion was rendered by the court below other than the letter from the Chief Justice to the petitioner announcing the court's decision (R. 73-74) and there is no official report of any opinion.

Jurisdiction

The jurisdiction of this court is invoked under Section 237 (b) of the Judicial Code (28 U. S. C. Sec. 344-b) to review a final judgment or decree of the Supreme Court of Illinois on the ground that said court has denied to the petitioner rights secured to him under the Fourteenth Amendment of the United States Constitution. The deter-

mination under review was made on March 22, 1944 (S. R. 1)[1]. The time within which to file the petition for certiorari, which would otherwise have expired June 22, 1944, was on that day extended by order of a justice of this court (R. 75), to June 29, 1944 and on the latter date the petition was filed (R. 76).

Statement of the Case

Petitioner seeks review of a determination (R. 74) in which the Supreme Court of Illinois sustained the unfavorable report of its Committee on Character and Fitness and refused to admit the petitioner to the practice of law in that state. The Committee after questioning the petitioner refused to certify him as eligible for admission to the bar on the sole ground that he is a conscientious objector to participation in war by reason of his religious training and belief and had been classified as such by his draft board (R. 73, 74).

After completing a law school course and passing the usual examination given to candidates for the bar, the petitioner appeared before the Character Committee and a hearing was held with regard to his fitness to become a member of the bar (S. R. 2, *et seq.*). The petitioner was questioned only with regard to his religious beliefs in regard to war. There was no question raised that in all other respects he is fit to become a lawyer.

As he explained to the Character Committee, the petitioner registered for the draft and was classified by his draft board as a conscientious objector in Class IV-E, but he was not assigned to a camp for conscientious objectors because he failed his physical examination (S. R. 5).

[1] S. R. references are to the Supplemental Record printed pursuant to stipulation of counsel filed March 16, 1945.

The petitioner testified that he would be perfectly willing to engage in any service, such as that performed by the Quakers, so long as he did not have to work under military authority, explaining that he believed the whole military system to be contrary to God's laws, since it is designed for the destruction of human beings (S. R. 23, 24, 39, 40).

The members of the Committee expressed the opinion that since the exercise of police power involves the use of force, the petitioner as a lawyer might be required to use force even to the extent of taking human life. The petitioner disagreed with this view, stating that a lawyer could uphold the law without taking human life (S. R. 25, 30, 31, 32, 33, 41).

In January, 1943, petitioner was informed that a majority of the Committee on Character and Fitness had declined to sign a certificate as to his character and fitness for admission to the bar, and that in the absence of such a certificate, the Board of Bar Examiners would not certify him to the Supreme Court for admission (R. 3). No findings were made by the Committee, nor any opinion given.

The reasons for the adverse report of the Committee are disclosed in a letter sent to the petitioner by a member of the Committee (R. 56-57) in which the position was taken that a lawyer must be prepared to use force in the administration and enforcement of the law, and therefore cannot properly take an oath to support the constitution if he is unwilling to use force under all circumstances. The sincerity of petitioner's views was not questioned.

Thereafter the petitioner filed in the Supreme Court of Illinois a petition praying that he be admitted to the bar, and he attached exhibits, which included the stenographic transcript of the hearing before the Character Committee (S. R. 2-47), and affidavits of good moral character (R. 61-73). The Supreme Court of Illinois denied

the petition and announced its decision in a letter from the Chief Justice to the petitioner dated September 20, 1943 (R. 74) in these words: "I am directed to advise you that the court is of the opinion that the report of the Committee on Character and Fitness should be sustained." Subsequently petitioner filed a petition for reconsideration of this determination which was denied on March 22, 1944 (S. R. 1).

On June 29, 1944, petitioner filed a petition for a writ of certiorari (R. 76) after having obtained an extension of seven days (R. 75). The petition was granted December 11, 1944, by this court (R. 76) and the writ issued (R. 76) pursuant to which the record herein was certified to this court.

Specification of Assigned Errors

No errors were assigned in the court below (the Supreme Court of Illinois) because this was an original proceeding in that court. The petitioner intends to urge all the points which were argued in the petition filed in the court below consisting of points numbered 1 to 6 inclusive (R. 28-30). In substance these points raise the following issue:

The denial to petitioner of admission to the bar because he is a conscientious objector interferes with his religious freedom, denies him the equal protection of the laws and deprives him of liberty and property without due process of law in violation of the Fourteenth Amendment.

ARGUMENT

POINT I

This court has jurisdiction to review the determination of the court below.

The jurisdiction of this court to review this proceeding is here discussed because the respondents upon consideration of the petition for certiorari filed a brief in which they questioned this court's jurisdiction.

(a) The proceeding below is a case or controversy within the meaning of Article 3, Section 2 of the United States Constitution.

The proceeding for admission to the bar in Illinois is similar to that which prevails in most states. Applicants are required to pass examinations showing their proficiency and knowledge of the law and must also appear before a committee which inquires into their character and makes a report in which they are certified either as fit or unfit to be admitted to the practice of law. Rule 58 of Rules of the Supreme Court of Illinois.

In the present case the petitioner passed the examination (R. 2) and appeared before the Character Committee which examined his character and raised no question regarding it except the question that he is a conscientious objector (S. H. 2, *et seq.*) which was discussed at length in a hearing before the Committee. The Character Committee then refused to issue a certificate that the petitioner is possessed of the requisite character and fitness to be admitted to the bar. (R. 3); whereupon the petitioner filed a petition with the Supreme Court, whose creature the Character Committee is, asking that he be admitted to the bar notwithstanding the adverse recom-

mendation of the Committee (R. 1-56). The petition was entertained by the court and was denied (R. 74), apparently upon the same ground as that taken by the Character Committee.

This denial was a judicial act of the Illinois Supreme Court. For although in most states admission to the bar, like the granting of other licenses and privileges to engage in particular occupations, is a function of the legislature (see *In the Matter of Cooper*, 22 N. Y. 67 (1860)), in Illinois it has always been held that admission to the bar is a judicial function within the sole province of the Supreme Court. *In re Day*, 181 Ill. 73 (1899). This rule is derived from the Illinois constitution Article 6 Section 2 which confers original jurisdiction on the Supreme Court of Illinois in certain cases and has been held to extend to admission to the bar. *People* v. *Peoples Stockyards Bank*, 344 Ill. 462 (1931). *In re Day*, cited above, involved an original petition in the Supreme Court of Illinois for admission to the bar of that state. The court not only entertained the petition but held that its functions, with regard to such applications, are judicial. See *In re Frank*, 293 Ill. 263 (1920), where the court entertained judicially an application for admission to the bar, and *Bradwell* v. *Illinois*, 55 Ill. 535 (1869), affd. 16 Wall. 130. And in a recent case where it punished for contempt of court and enjoined the unlawful practice of law by a banking corporation, *People* v. *Peoples Stockyards Bank*, 344 Ill. 462 (1931), that court said (p. 471):

> "Since its inception this court has exercised original jurisdiction of proceedings relating to the admission and disbarment of attorneys, and although the constitutional provision [Article 6, Section 2 conferring original jurisdiction on the Supreme Court of Illinois in revenue, mandamus and habeas corpus cases] does not mention these subjects, the original jurisdiction of this court over such matters has never been questioned. This court has exercised

> original jurisdiction of applications for admission to the bar of this State (*In re Day, supra*) and in numerous cases has entertained original proceedings for disbarment."

See also *People ex rel. Chicago Bar Assn.* v. *Goodman*, 366 Ill. 346 (1937); *People ex rel. Chicago Bar Assn. v. Moseley*, 278 Ill. 377 (1917), *People* v. *Novotny*, 386 Ill. 536, 540 (1944), *People ex rel. Chicago Bar Ass'n* v. *Amos*, 246 Ill. 299, 301 (1910).

These cases make it clear that the Illinois court in admitting to the bar or refusing such admission, is not merely exercising administrative control over the fraternity of lawyers, as leading members of that fraternity, but is exercising a judicial function vested in it by the constitution of the state, namely, the determination of qualifications of persons desirous of receiving from the state the privilege of practicing law. The power of the organized bar has been such that admission to the bar has always been largely under the control of lawyers and judges, and they have at times sought to make that control exclusive. *Bradwell* v. *Illinois*, 16 Wall. 130. But it is nevertheless clear that admission to the bar, like the granting of a license to practice medicine or a franchise to operate a street railway, is a grant by the state to its citizens which does not rest within the exclusive control of those who have already received such a grant.

Moreover, this court has recognized many times that admission to the bar is the exercise of a judicial power. *In re Secombe*, 19 How. 9, 13; *Ex parte Robinson*, 19 Wall. 505; *Ex parte Garland*, 4 Wall. 333, 379; *Randall* v. *Brigham*, 7 Wall. 523, 535.

And even in England, where admission to the bar is not a judicial act, it is reviewable in the courts. The four Inns of Court control the calling to the bar of barristers and the Law Society exercises similar control over the creation of solicitors. However, the judges of the common law

courts, acting as visitors of the Inns and the Law Society, exercise the power of review:

> "The decisions of the benchers are not subject to review in any Court of Justice, but an appeal from them lay, before the Judicature Act, 1873, to the Lord Chancellor and the judges of the Superior Courts of Common Law, and now lies to the Lord Chancellor and the judges of the High Court of Justice sitting as a domestic tribunal." Marchant, *Barrister-at-Law*, p. 5. London 1905.

See also Harvey's case (1821) which is discussed in Pearce, *Inns of Court*, London, 1855, pages 405-411.

Since the proceeding below constituted a judicial proceeding, it follows that this is a case or controversy within the meaning of Article 3, Section 2, of the United States Constitution. As this Court stated in *Osborn* v. *Bank of United States*, 9 Wheat. 738 at page 819:

> "This clause enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case . . ."

See also *Marbury* v. *Madison*, 1 Cranch 137; Hughes, *Federal Practice*, § 240.

The argument made by respondents that a "case" or "controversy" cannot exist here because this is not litigation involving opposing parties and susceptible of a judgment or decree is based on a misunderstanding of the nature of this proceeding. This proceeding is an application by the petitioner *ex parte* for relief within the power of the Illinois Supreme Court, namely, its adjudication that

he be admitted to the bar. It seems obvious that a "case" may arise although there is only one party and his status is the subject matter of the proceeding. And in analogous situations this court has held that a case or controversy exists which confers jurisdiction upon the Federal Courts. In *Tutun* v. *U. S.*, 270 U. S. 568, a petition for naturalization was held to present a case within the meaning of the Constitution and therefore reviewable on appeal although the proceeding involved a determination of status and was *ex parte*. The court said:

> "Whenever the law provides a remedy enforceable in the courts according to the regular course of legal procedure, and that remedy is pursued, there arises a case within the meaning of the constitution, whether the subject of the litigation be property or status" (p. 577).

We feel that the nature of the legal proceeding involved in a petition for naturalization is substantially identical to that involved in an application for admission to the bar.

Furthermore, if there were any question that a proper case or controversy had not been presented to it, the Supreme Court of Illinois could have refused to entertain the petitioner's application. But the application was entertained and a decision was rendered upon the merits. (See letter from the Chief Justice to petitioner (R. 74)). Having chosen to treat the petitioner's application as a case for judicial determination and having actually decided the case upon the merits the Supreme Court of Illinois has thereby established that a case or controversy exists which can be reviewed by this court under section 2 of Article 3 of the United States Constitution. The mere fact that the case was considered "informally" in the chambers of the Justices and that the record of the proceeding was not made public is irrelevant. This court must look to what was done and not to the labels which have been applied.

(b) The denial by the Illinois Supreme Court of a petition for admission to the bar is the act of a state within the intendment of the Fourteenth Amendment and presents a question reviewable by this court.

The Fourteenth Amendment affords protection only against state action, but the action complained of need not be legislative or executive. It may be the judicial act of a court with regard to a single controversy before it such as is involved in the present case. This court has often reviewed injunctions and contempts of court which have been challenged as being in violation of freedom of speech. *American Federation of Labor* v. *Swing*, 312 U. S. 12, 21; *Bridges* v. *California*, 314 U. S. 252; *Cf. Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337; *Mooney* v. *Holohan*, 294 U. S. 103.

POINT II

Petitioner has been denied the equal protection of the laws and deprived of liberty and property without due process of law in violation of the Fourteenth Amendment, in having been refused admission to the bar of Illinois solely because he is a conscientious objector.

At the outset, it should be noted that the ordinary presumption of constitutionality of official acts does not apply in civil liberties cases, whether the acts involved are legislative or judicial. *American Federation of Labor* v. *Swing*, *Bridges* v. *California*, *supra*. See *Board of Education* v. *Barnette*, 319 U. S. 624; *Thomas* v. *Collins*, 65 Sup. Ct. 315 (Oct. term, 1944, No. 14); *Schneider* v. *State*, 308 U. S. 147.

(a) The action complained of interferes with the petitioner's religious freedom.

The religious freedom which is protected against infringement by Congress under the First Amendment is

one of the liberties in which the citizen is protected under the Fourteenth Amendment against interference by a state. See *Cantwell* v. *Connecticut*, 310 U. S. 296.

The petitioner has been denied admission to the bar by the State of Illinois solely because he is a conscientious objector. The petitioner claimed exemption from military service under Section 5 (g) of the Selective Training and Service Act of 1940, which provides such exemption for any person who "by reason of religious training and belief, is conscientiously opposed to participation in war in any form." The petitioner's claim was recognized by his draft board and he was classified in Class IV-E, the class for conscientious objectors opposed to combatant and non-combatant service (S. R. 5).

It is therefore established both by the action of the draft board and the further explanation given by the petitioner to the Character Committee (S. R. 23, 24, 39, 40) that petitioner's conscientious scruples against participation in war are part of his religious beliefs. See *United States* v. *Kauten*, 133 Fed. 2d 703 (C. C. A. 2nd, 1943), where the religious nature of such beliefs is discussed. It was solely because of these beliefs that petitioner was excluded from the practice of law in Illinois; no suggestion of any other ground for exclusion appears in the record, and it is affirmatively shown that petitioner was in all other respects well qualified.

The question before this court is, therefore, whether a state may penalize a person for the holding of an unpopular religious belief by denying him the right to practice law.

There is no question of interference with the petitioner's freedom to act in accordance with his religious beliefs since he is protected therein by the draft law. This is solely a question of petitioner's freedom to hold a religious belief. For this reason, we are not concerned

here with the limitations upon freedom to act which are recognized in such cases as *Hamilton* v. *Regents*, 293 U. S. 245, and the *Selective Draft Law* cases, 245 U. S. 366. As was said in *Cantwell* v. *Connecticut*, 310 U. S. 296, 303:

> "The constitutional inhibition of legislation on the subject of religion has a double aspect. • • • The [Fourteenth] Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."

See also *Board of Education* v. *Barnette*, 319 U. S. 624.

Freedom of religious belief being foremost among the liberties which led to the establishment of our Constitution, it has been protected under that document with special care. In matters of conscience, the state has no power of regulation and may not interfere with the sacred right of an individual to recognize and follow a duty which is higher than his duty to the state, his duty to God. A most eloquent statement of these principles, as applied to a conflict between the demands of the state and the conscience of the citizen, may be found in the dissenting opinion of Chief Justice Hughes in *United States* v. *Macintosh*, 283 U. S. 605, 627-635.

More recently the Supreme Court of New Jersey has had occasion to apply these principles to a situation similar to the one here presented. *Morgan* v. *Civil Service Comm.*, 131 N. J. Law 411 (1944). In that case, as here, a state had denied a position of public trust to a citizen solely because of his religious beliefs. The New Jersey Civil Service Commission had refused to appoint him bridge attendant, although he would have otherwise been entitled to the appointment, solely because he was a Jehovah's Witness and had declared his unwillingne . salute the flag of the United States while asserting his allegiance to

the government and to the principles which the flag represents. The court said (p. 413):

> "The cherished constitutional liberties guaranteed against impairment by State action prohibit governmental intrusions into the consciences of men. Government may not command individual belief or declaration of belief contrary to faith; nor may it enjoin the harboring of thoughts contrary to one's convictions. The mind and spirit of man remain forever free, while his actions rest subject to necessary accommodations to the competing needs of his fellows.' *Jones* v. *City of Opelika*, 316 U. S. 584."

And the opinion makes plain that the sort of discrimination for religious belief which is here involved is prohibited by the Bill of Rights (p. 417):

> "The cited guarantees of personal liberty plainly forbid disqualification from the public service for one's religious or political opinions."

It may be argued that the interference with religious liberty complained of has been permitted by this court in *Hamilton* v. *Regents*, 293 U. S. 245, *supra*. In that case it was held that a state did not deprive pacifist students of liberty by requiring military training in a state university because they were free to secure their education elsewhere in the state. In this case, however, petitioner is wholly excluded from the practice of law in Illinois.

Similarly the cases of *U. S.* v. *Schwimmer*, 279 U. S. 644, and *U. S.* v. *Macintosh*, 283 U. S. 605 have no application here. Those cases involved merely the question whether Congress in the exercise of a power granted it by the Constitution had intended to exclude pacifists from naturalization, a very different question from that presented in the instant case. Since the Constitution contains no restrictions upon the powers of Congress to impose conditions on naturalization, the question presented by the pe-

titioner was not raised and it could not have been raised in the *Macintosh* and *Schwimmer* cases.

Moreover, the dissenting opinions in the *Macintosh* and *Schwimmer* cases may today be regarded as more nearly expressing the course which the law should take. See the majority and dissenting opinions in *Schneiderman* v. *U. S.*, 320 U. S. 118.

(b) The petitioner has been denied the equal protection of the laws.

The general meaning and purpose of the equal protection clause has often been considered and is well known to this court. This clause was designed to secure every person against intentional and arbitrary discrimination whether by the state or its agents in regard to his privileges as well as his rights. *Truax* v. *Raich*, 239 U. S. 33.

The provision of the Fourteenth Amendment for equal protection of the laws requires in this instance that the laws of Illinois governing admission to the bar shall be applied with equal hand and without discrimination. All candidates for the bar who possess the necessary qualifications must be admitted; none may be excluded because of race, creed, religion or upon any other basis which bears no reasonable relation to fitness for the profession. While the Fourteenth Amendment does not require that all persons shall be treated the same, it does demand that they shall be treated equally under the law. Only those distinctions are permitted which have some relation to the ends sought to be achieved. *Smith* v. *Texas*, 233 U. S. 630, 636. Distinctions which arise from prejudice whether it be economic, political, racial or religious are prohibited. *Lawton* v. *Steele*, 152 U. S. 133; *Meyer* v. *Nebraska*, 262 U. S. 390; *Korematsu* v. *U. S.*, 323 U. S. 214.

The commonest of all discriminations are those which derive from racial and religious differences. Firmly embedded in the Constitution is the requirement that the laws of a state may not discriminate between persons upon the basis of race or religious persuasion. These principles have been frequently uttered by this court and carefully safeguarded by its decisions. They are the very cornerstone upon which civil liberties have been built.

In *Yick Wo* v. *Hopkins*, 118 U. S. 356, this Court held that an applicant could not be denied a license to operate a laundry solely because he was Chinese, for such action constituted a denial of equal protection of the laws under the Fourteenth Amendment. See also *U. S.* v. *Hirabayashi*, 320 U. S. 81 (at p. 100) and *Korematsu* v. *U. S.* 323 U. S. 214 involving discrimination against persons of Japanese ancestry on the West Coast.

Similarly in *Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337, this court decided that a state could not exclude a person from a state law school because he was a Negro if it did not at least provide other law schools of comparable standards for Negroes. This action was held to be a denial of equal protection of the laws even though provisions were made for the state to pay transportation expenses and tuition of Negroes at law schools in any adjacent state. See also *Bluford* v. *Canada*, 32 Fed. Supp. 707 (D. C. Mo., 1940) appeal dismissed 119 Fed. 2d 779 (C. C. A. 8th, 1941).

Moreover, in *Chaires* v. *City of Atlanta*, 164 Ga. 755 (1927), an ordinance prohibiting colored barbers from serving white children was held to violate the equal protection clause of the Fourteenth Amendment. And in *Alston* v. *School Board*, 112 Fed. 2d 992 (C. C. A. 4th, 1940) it was decided that the payment of Negro teachers at a lower rate than white teachers of equal ability was a denial of equal protection of the laws. See also *Templar* v. *State Board*, 131 Mich. 254 (1902), where a state law

requiring an applicant for a barber's license to be a citizen of the United States was held to deny the equal protection of the laws.

Under these cases it is clear that exclusion from the practice of law on the basis of race would be a denial of equal protection of the laws under the Fourteenth Amendment because the racial test would have no reasonable relation to the securing of high standards of ethics and proficiency in the legal profession. Similarly, a man's religious beliefs bear no reasonable relation to these standards and to exclude him from the practice of law because of them is, therefore, an arbitrary discrimination in violation of the equal protection clause. This was the holding in the recent New Jersey case, *Morgan* v. *Civil Service Commission*, 131 N. J. Law 411, 414-415 (1944), cited above, where the denial to a Jehovah's Witness of a public office, for the sole reason that he was unwilling for religious reasons to salute the flag, was held to be a denial of equal protection of the laws in violation of the Fourteenth Amendment.

In its arguments the State of Illinois has been unable to establish any relationship between petitioner's religious belief against participation in war and his fitness to become a lawyer.

From an examination of the transcript of the hearing before the Character Committee, it appears that the members of the Committee regarded petitioner as unfit to become a lawyer because they took the view that a lawyer must be prepared, as an officer of the court, to administer and enforce the law with such force as may be necessary (S. R. 32). The Committee argued that the taking of human life might, under certain circumstances, be required of a lawyer, and questioned the petitioner with regard to his willingness, if he were a prosecutor, to demand the death penalty (S. R. 41) and also his willingness to dispossess a homeless family in aid of a client (S. R. 41).

The position of the Character Committee that a lawyer must be prepared to uphold the police power, even by violence, presents an artificial picture of the lawyer's function. While it may be that police officers occasionally must resort to violence, although even this is questionable and in England the police go unarmed, there is no reason to assume that a lawyer must exercise the functions of the police to any greater extent than any other citizen. The lawyer is not the officer of the executive branch of the government, whose duty it is to exercise police power, but he is the officer of the court, a judicial agency, whose duty it is to resolve disputes and not to enforce the laws. The Character Committee has apparently misunderstood the difference between judicial and executive functions; the police power falls entirely in the latter category.

Moreover, opposition to the violent slaughter of soldiers and civilians which results from warfare is a very different thing from the problem posed by the occasional criminal who can be subdued only by the use of black jack or pistol. So long as he believes in the orderly processes of government and in the proper execution of the laws, a pacifist is surely able to support the laws and the constitution regardless of what attitude he may take in the event of war, which represents a total break down of law and order. Indeed it might be said that the pacifist is more disposed to uphold law and order than the militarist, since the pacifist would insist upon moral law in all situations, whereas the militarist recognizes a point where law breaks down and disputes must be settled outside the law by means of force.

And even assuming that a lawyer might find himself in a situation where his client required a resorting to force which he could not stomach, it is always the privilege of the lawyer to decline to accept a case which for personal reasons he feels he cannot properly handle.

In addition, an examination of the canons of professional ethics, which set forth the principles of conduct for lawyers, reveals nothing which would require a lawyer to undertake police functions or at any time to indulge in the use of force. There is nothing in the record which indicates that the petitioner could not wholeheartedly subscribe to these canons, nor is there anything in the record which would indicate that he could not perform all the duties of a lawyer and a citizen.

The fact that a pacifist can perform these duties was early recognized in England by statute, 12 George 2, Chap. 13, Sec. 8. It was provided that Quakers, who were then entirely pacifist, might be admitted to enrollment as attorneys or solicitors by the taking of an affirmation instead of the oath generally required. While the purpose of this statute was to relieve Quakers from the requirement of taking the oath, the mere existence of the statute is a tacit recognition of the prevailing state of public opinion under which Quakers were freely admitted to the practice of law despite their pacifism. If there had been any public doubt about the qualifications of Quakers to become lawyers, surely a statute would not have been passed to facilitate their admission to the bar. We have found no case either in England or the United States where a Quaker or other pacifist has been held to be ineligible for admission to the bar or indeed for any other public office.

The respondents have argued in their brief in connection with the petition for certiorari that petitioner was not qualified for admission to the bar because he could not properly take the oath to support the Illinois constitution, which contains a provision for militia service. This question was not raised before the Character Committee, nor was it, so far as the record discloses, a ground for the decision of the Supreme Court of Illinois. Since this issue was not raised below, it should not be countenanced here.

But even if this contention may properly be raised at this time, it is wholly lacking in merit. While a lawyer is required to support the constitution and the laws of the state, this has to do with his attachment generally to the principles of government. Religious scruples which may impel the individual to request exemption from military duties generally imposed upon citizens, have nothing to do with the individual's support in general of the principles of our government. See the dissenting opinion of Chief Justice HUGHES in *U. S.* v. *Macintosh*, 283 U. S. 605, 630-632.

Recent recognition of this may be found in a ruling of the Civil Service Commission contained in Departmental Circular No. 286 issued November 8, 1941, which provides that the classification of a person as a conscientious objector "is not a bar to his reinstatement or employment in the Federal service. A claim of conscientious objection recognized and approved by the government under the Selective Training and Service Act does not indicate such a 'mental reservation or purpose of evasion' as would make the taking of an oath of office under Title 5, Section 16 of the United States Code an invalid act."

The oath referred to is the oath prescribed for appointment to office under the United States which requires the affiant to swear that he will "support and defend the Constitution of the United States against all enemies, foreign and domestic." The Civil Service Commission has ruled that a conscientious objector may take such an oath. Similarly a lawyer may take an oath to support and defend the constitution, as did the writer of this brief, without being willing to engage in the bearing of arms.

Furthermore, it cannot be said that the petitioner is unable to subscribe even in a personal way to the militia provisions of the Illinois constitution. Sections 1-6 of Article XII of that document give to the legislature the

power to require militia service, but specifically exempt conscientious objectors from militia service in time of peace, and "such persons as now are or hereafter may be exempted by the laws of the United States." However, the Illinois legislature has not in recent times seen fit to exercise this power and the militia of Illinois has consisted only of volunteers both in the first World War and in the present conflict, as well as in time of peace. *Illinois Laws of 1917*, p. 782; *Laws of 1943*, Vol. I, p. 1321; Vol. 14 *Jones Illinois Statutes*, Secs. 80.219 (2), 80.219 (4), (1944 Supp.):

The Illinois constitution is not a self-executing document but merely a grant of power, including a grant to the legislature of the power to organize and call forth the militia. But as the legislature has provided only for voluntary militia service, and petitioner in any event would be exempt, he could comply with this provision of the Illinois constitution.

We have shown that a realistic appraisal of the functions of a lawyer indicates that his attitude toward force, and particularly toward the violent force of warfare, has no relation to the practice of law and therefore cannot enter into the qualifications of a lawyer.[1]

If further proof were needed of the fact that a pacifist may properly become a lawyer, it can be found in the popular recognition which has been given to many pacifists who have achieved eminence not only in the legal profession, but in other fields of human endeavor.

---

[1] In the case of *In re Sullivan*, 57 Mont. 592 (1920), Attorney Sullivan, while not a pacifist, was apparently a political objector to the last war. For this reason, objections to his admission to the bar were lodged with the Montana Supreme Court. The Court ordered that he be suspended for a short period, but said,

> "However, we are not prepared to say that the applicant is so far deficient in moral character that he cannot become a useful member of society and an honorable and useful member of the bar of this state. . . . he may be reinstated upon a satisfactory showing that he is a man of good character and worthy of the respect and confidence of his fellow men." (p. 593)

(c) The petitioner has been deprived of liberty and property without due process of law.

It has frequently been held by this court that every citizen has a right to engage in any lawful occupation, subject to reasonable regulations which may be imposed by the state for the public welfare, and that any infringement of that right is a deprivation of liberty and property protected by the Fourteenth Amendment. This principle was stated in *Dent* v. *West Virginia*, 129 U. S. 114, which involved the validity of a statute prescribing conditions for the practice of medicine.

> "It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to every one on like conditions" (at p. 121).

Likewise this court stated in *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589, in language which has often been quoted:

> "The liberty mentioned in that amendment • • • is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, • • • "

The right to engage in any lawful calling has been given the protection of the Fourteenth Amendment in many cases involving a variety of occupations and professions. See *Yick Wo* v. *Hopkins*, 118 U. S. 356 (operation of a laundry); *Mayflower Farms* v. *Ten Eyck*, 297 U. S. 266 (price-fixing of milk); *Smith* v. *Texas*, 233 U. S. 630 (railroad brakeman); *Liggett* v. *Baldridge*, 278 U. S. 105 (pharmacy);

Dent v. *West Virginia*, 129 U. S. 114 (medicine); *Hurwitz* v. *North*, 271 U. S. 40 (medicine); *Semmler* v. *Oregon State Board*, 294 U. S. 608 (dentistry); *Stanley* v. *Public Utilities Comm.*, 295 U. S. 76 (motor carriers).

The principle of the foregoing cases applies equally to the legal profession as to other professions and occupations. However, this court has never had occasion to apply this principle to the legal profession. The cases in which this court has considered the disbarment of attorneys or denial of admission to the bar either arose before the adoption of the Fourteenth Amendment or were considered under the privileges and immunities clause of that amendment, which has been held to extend only to rights inherent in Federal citizenship and would not therefore protect the right to practice law. See: *In re Secombe*, 19 How. 9; *Bradwell* v. *Illinois*, 16 Wall. 130; *In re Lockwood*, 154 U. S. 116.[1] See also cases cited *supra*, p. 7.

It seems clear that the practice of law, like the right to engage in other occupations which have been the subject of decisions of this court under the Fourteenth Amendment, is a liberty of the citizen which is protected by that amendment. Under the principle stated above, the citizen has the right to engage in any lawful occupation or profession, and this right is one of his liberties which cannot be taken away without due process of law.

There may be some question as to whether the practice of law is also a property right. It is held generally that the right to engage in business is a property right within the meaning of the Fourteenth Amendment. Similarly, it may be argued that the right to engage in the practice of law, since it is also a means to a livelihood, involves rights of property, although we have found no decision in this

[1] The *Bradwell* and *Lockwood* cases, cited in the text, leave open the question whether admission to the bar is a privilege of state citizenship which would be protected by the due process clause of the Fourteenth Amendment.

court touching on that point, and there are decisions in state courts to the effect that the practice of law is not a property right. *Cf. Ex parte Wall*, 107 U. S. 265, 289, where the court stated among other things;

> "Conceding that an attorney's calling or profession is his property within the true sense and meaning of the constitution * * *."

As society becomes more economically complex, it appears artificial to draw a distinction between those rights of property which inhere in tangible assets and those which consist of learning and skill. While the tools of the lawyer's trade are intangible and will not survive him, they are none the less valuable and productive assets. It is not necessary, however, to press this point since the Fourteenth Amendment protects liberty, as well as property, and there can be no doubt that the right to engage in the legal profession is a liberty even though it may not be regarded as a property right.

It remains only to be shown that the petitioner's liberty and perhaps also his property has been taken away without due process of law. But we need not recite how "due process" has been expanded to include protection against all arbitrary government action. See Warren, *The New Liberty Under The Fourteenth Amendment* (1926), 39 Harvard Law Review, 43. As has been pointed out above with regard to the equal protection clause, the ground given for excluding the petitioner from the practice of law has no reasonable relation to his fitness for the profession. The test applied to the petitioner is, therefore, arbitrary and unreasonable and not in accordance with due process of law. See: *Douglas et al.* v. *Noble*, 261 U. S. 165; *Smith* v. *Texas*, 233 U. S. 630, 636.

CONCLUSION

This court should set aside the determination of the Supreme Court of Illinois upon the ground that it deprives the petitioner of constitutional rights and should remand the case to the Supreme Court of Illinois for further proceedings in conformity with the decision of this court.

The petitioner asks that the determination of the Illinois court be set aside as a deprivation of petitioner's constitutional rights and that this court remand the case to the Illinois Supreme Court for further proceedings on his petition for admission to the bar in conformity with such decision as this court may render.

Respectfully submitted,

JULIEN CORNELL,
Attorney for Petitioner,
15 William Street,
New York 5, N. Y.

ALFRED T. CARTON,
FRANCIS HEISLER,
CHARLES LIEBMAN,
Of the Illinois Bar,

CHARLES FINCH,
CLIFFORD FORSTER,
ARTHUR GARFIELD HAYS,
Of the New York Bar,
Of Counsel.

APPENDIX I

CONSTITUTION OF ILLINOIS, ART. XII, SEC. 1

"The militia of the state of Illinois shall consist of all able-bodied male persons resident in the state, between the ages of eighteen and forty-five except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this state."

CONSTITUTION OF ILLINOIS, ART. XII, SEC. 6

"No person having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace: *Provided*, such person shall pay an equivalent for such exemption."

APPENDIX II

VOL. 14 JONES ILLINOIS STATUTES (1944 SUPPLEMENT) MILITARY AND NAVAL AFFAIRS

Sec. 80.219(2). Power of Governor to create Illinois Reserve Militia. § 2

Whenever the Governor as Commander-in-Chief of the Military and Naval Forces of the State, deems it necessary or advisable for the purpose of executing the laws of the State, or of preventing actual or threatened violations thereof, such as suppressing actual or threatened insurrection, invasion, tumults, riots or mobs, or when the Nation is at war and a requisition or order has been made, or is likely to be made, by the President of the United States calling the National Guard, or parts thereof, into the National service, or for any other emergency, he may issue a proclamation or call for volunteer companies, battalions, regiments, brigades, or other units of land and air forces to be known as the Illinois Reserve Militia which shall be formed and organized from the unorganized militia of the State, consisting of all able-bodied male citizens between the ages of 18 and 45 years, and of other able-bodied male citizens between the ages of 45 and 55 years, as enlisted men, and of commissioned officers and warrant officers, when made necessary by an emergency.

Sec. 80.219(4). Persons of which militia shall consist. § 4

The Illinois Reserve Militia shall consist of the regularly enlisted male citizens between the ages of eighteen and fifty-five years, and of commissioned officers and warrant officers between the ages of twenty-one and sixty-four years, organized, armed and equipped as prescribed by such rules and regulations, Tables of Organization, and Tables of Equipment, as may be from time to time promulgated by the Adjutant General, and approved by the Governor, which shall conform to any existing regulations prescribed by the Secretary of War of the United States.

APPENDIX III

RULES OF PRACTICE AND PROCEDURE OF THE SUPREME COURT OF ILLINOIS

Rule 58

Admission to the Bar

The following order was entered by the Court on January 21, 1942:

Order

It is ordered that for the duration of the war and until the further order of the Court, the Board of Law Examiners is authorized to administer Rule 58 governing admission to the bar as follows:

(1) The final semester of law school study may be waived in the case of applicants for the bar examination who are about to enter the armed forces of the United States and will for that reason be unable to complete their law studies in accordance with the present requirements of the rule.

(2) Applicants failing to pass a satisfactory examination in September or December, 1941, or thereafter while the United States is at war, who enter the armed forces of the United States before the examination next following such failure, shall be re-examined only in the subjects on which they failed to pass a satisfactory examination. The first re-examination shall be without additional fee.

(3) Law students about to enter the armed forces of the United States who have satisfactorily completed two-thirds of the work required for graduation from law school, as evidenced by certificate of a law school or schools, may be permitted to enter the bar examination to be examined, however, only on the subjects enumerated in Rule 58 which they

have completed. If they enter the armed forces before they have completed their law study in accordance with Rule 58, they shall be re-examined for admission to the bar after completion of the required law study only in the subjects on which they failed to pass a satisfactory examination and the subjects in which they were not previously examined. The filing fee in such cases shall be $20.00 and no fee shall be required for the first re-examination.

(4) In addition to the two examinations prescribed by Rule 58, the Board of Law Examiners may in its discretion conduct other examinations and all such examinations may be held at such times and at such places as the Board of Law Examiners shall deem proper. (Order of January 21, 1942.)

SECTION I.—*General Qualifications*

Persons may be admitted to practice as attorneys and counselors-at-law in this State if they are citizens of the United States, at least twenty-one years of age, of good moral character and have satisfactorily passed an examination before the Board of Law Examiners or have been licensed to practice law in another state, territory, the District of Columbia or in certain foreign jurisdictions. All subject, however, to the terms and requirements hereinafter contained in this rule.

SECTION II.—*Board of Law Examiners*

1. The present members of the Board of Law Examiners shall be continued in office until the expiration of the terms for which they were appointed. The Board shall thereafter consist of five members of the Bar, appointed by the Supreme Court, and each shall serve a term of three years and until his successor is duly appointed and qualified. Two members of the Board shall be appointed from the First Appellate Court District and one member from each

of the Second, Third and Fourth Appellate Court Districts. Each member of the Board, upon his appointment, shall make and file with the Clerk of the Supreme Court his oath faithfully to discharge the duties of his office.

2. A majority of the Board shall consititute a quorum. A President, Secretary and Treasurer shall be annually elected. One member may hold the office of both Secretary and Treasurer.

3. The members of the Board and the officers thereof shall receive such salaries as the Court may provide and such further sum for necessary disbursements as may be approved by the Court, all payable out of moneys received from applicants for admission to the Bar as fees for examination and admission.

4. The Board shall audit annually the accounts of its Treasurer and shall report to the Court at each November term a detailed statement of its finances, together with such recommendations as shall seem advisable. All fees paid into the Board in excess of its expenses shall be applied as the Court may from time to time direct.

SECTION III.—*Educational Requirements.*

Every applicant seeking admission to the Bar of Illinois on examination shall meet the following educational requirements and shall make proof thereof in the manner following:

1. Preliminary and college work: Each applicant shall have graduated from a four year high school or other preparatory school whose graduates are admitted on diploma to the freshman class of any college or university having admission requirements equivalent to those of the University of Illinois; and after such high school or preparatory school graduation shall have satisfactorily completed at least seventy-two weeks of general college work while in actual attendance at one or more colleges or universities ac-

credited by the Board of Law Examiners, or shall have completed such work as is recognized by the Board as the equivalent of such general college work.

Proof: Proof of such preliminary education shall be made either by diploma showing such graduation or by certificate that the applicant has become entitled to enter such college or university, signed by the Registrar thereof. Proof of the satisfactory completion of such college work shall be made either by certificate that the applicant has satisfactorily completed such work, or in lieu of such certificate, the applicant must pass an examination given by or under the direction and supervision of the Board of Law Examiners in a course of studies to be approved by the Board as the equivalent of such seventy-two weeks of college study. The Board by rule may recommend certain subjects, but shall not specifically require any particular group of studies, as the equivalent of such seventy-two weeks of general college work.

2. *Legal Education:* After the completion of both the preliminary and college work above set forth in Paragraph 1 of this Section, each applicant within the period of six years immediately prior to making application shall have pursued a course of law studies by one of the following methods, of which proof thereof, respectively, shall be made in the manner following:

A. *Law School Study:* Such course of law studies shall have been pursued by the applicant in one or more established law schools accredited by the Board of Law Examiners, and shall aggregate at least 1,296 class room hours. In computing such number of class room hours, credit shall be allowed for no more than five hundred forty class room hours in any period of one scholastic year; but if during any such week or weeks a major portion of such class room hours shall be after four o'clock in the afternoon, then credit shall be allowed for no more than three hundred fifty-

one class room hours during the period of one year. It shall be required that the applicant shall have passed satisfactory examinations in each of the law studies aggregating said twelve hundred ninety-six class room hours. Proof of such law school study shall be made by certificates from such law school or schools.

B. *Law-office Study:* Such course of law studies, embracing the subjects herein enumerated and such further law studies as shall be prescribed by the Board of Law Examiners as the equivalent of the law school study above provided, shall have been pursued by the applicant, after registering with the Board of Law Examiners at the beginning of such course of law studies, while actually engaged during usual business hours as a law clerk or in a similar capacity in a law office and under the personal tuition of a licensed attorney for attorneys in active practice in the State of Illinois for a period of four years during at least thirty-six weeks in each year, and such applicant shall have satisfactorily passed monthly written or oral examinations in each subject given under the direction of such attorney or attorneys.

Proof: Proof of such law studies shall be made by (1) filing with the Board of Law Examiners prior to the beginning of such course of law studies, a registration statement by the applicant specifying the date on which such law studies are to commence, the name and address of such attorney or attorneys under whom he will study and such other relevant facts as the Board may require, and an undertaking by such attorney or attorneys faithfully to give such instruction and such examinations, specifying the books to be used and method of instruction to be employed, the approximate dates on which such examinations are to be held and such other relevant facts as the Board may require; and (2) filing with the Board of Law Examiners at the conclusion of such law office study the affidavit of such attorney or attorneys showing a full compliance with this

provision. If, in consequence of the death or absence from the State of any such attorney, his affidavit cannot be procured, such proof, subject to the approval of the Board of Law Examiners, may be made by affidavit of any credible witness having personal knowledge of the facts. The applicant may be required by the Board of Law Examiners to take an examination under the supervision of the Board once each year during the first three years of such law office study.

C. *Combined Law School and Law-office Study:* In the event an applicant shall have pursued a course of law studies partly in a law school and partly in a law office as above provided, then, to meet the requirements of this rule, the applicant shall have pursued such course of law studies for a period of four years during at least thirty-six weeks in each year. The applicant shall be allowed credit for his law school study upon presentation of a certificate from such law school or schools showing the studies taken therein by personal attendance, the number of classroom hours and weeks of law study pursued, and the passing of satisfactory examinations in such studies and the applicant shall be allowed credit for his law office study when proof thereof is made as above provided.

3. The Board of Law Examiners in their discretion may waive the six-year requirement of paragraph 2 of Section III in the case of any applicant who meets the other requirements of this section and who has been admitted to practice in a foreign jurisdiction, but who has not practiced there for the required period of time to gain admission in Illinois on a foreign license.

SECTION IV.—*Qualification on Examination*

1. Any person who meets the educational requirements set forth in Section III of this rule may make application to the Board of Law Examiners for admission to the Illinois Bar on examination.

2. Applications shall be in such form as the Board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Section 1 of this rule, together with proof of his educational qualifications. In the event the proof shall be satisfactory to the Board of Law Examiners, the applicant shall be admitted to examination.

3. The Board of Law Examiners shall conduct two examinations annually—in Chicago in September and in Springfield in March, on the first Tuesday in each of said months, unless the Board shall fix a different place and shall give to all applicants not less than thirty days' notice of such change. The examinations shall be conducted under the supervision of the Board by uniform printed interrogatories, and by such additional or supplemental methods as the Board may prescribe. The examinations may be upon the following subjects: The law of real and personal property, persons and domestic relations, torts, contracts, partnerships, bailments, negotiable instruments, agency, suretyship, wills, private and municipal corporations, equity jurisprudence, crimes, conflict of laws, evidence, administrative law, law and equity pleading practice and procedure, the federal and state constitution, and legal ethics.

4. If an applicant fails to pass his first examination, he may be permitted to take successive examinations provided he furnishes the Board with satisfactory evidence of diligent study of the law since his prior examination. An applicant who has been rejected at a fifth examination shall not again be admitted to an examination except upon the permission of the Board of Law Examiners or the Supreme Court. The Board or Court so granting the permission may, as a condition to the granting of another examination, prescribe a further course of study and fix the time when such examination may be taken.

5. The Board shall certify to the court the name of every person who has passed the Bar examination and is ready for admission.

SECTION V.—*Qualification on Foreign License*

1. Any person who has been admitted to practice in the highest court of law in any other state or territory of the United States or the District of Columbia, or admitted to practice as an attorney and counselor-at-law (or the equivalent) in another country whose jurisprudence is based upon the principles of the English Common Law, may make application to the Board of Law Examiners for admission to the Bar without examination upon any one of the following conditions:

(a) If the requirements for admission in such other jurisdiction at the time of the applicant's admission there were equivalent to the requirements prescribed by this rule;

(b) If the applicant while an actual resident in such other jurisdiction and having been admitted there under a rule requiring not less than two years of law study, has actively practiced law in such other jurisdiction for at least five years within the period of seven years immediately prior to making application in Illinois;

(c) If the applicant while an actual resident in such other jurisdiction and having been admitted there under a rule which does not require at least two years of law study, has actively practiced law in such other jurisdiction not less than eight years within the period of ten years immediately prior to making application in Illinois.

2. Applications shall be in such form as the Board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Section I of this rule, together with proof of such residence, admission to practice, and, if required, of such practice; and such proof shall be supported by a certificate of a judge of the highest

court in such other jurisdiction certifying that the applicant has been so admitted and is of good moral character. Such certificate shall be certified by the Clerk of the Court and sealed with a seal thereof.

3. In the event the Board of Law Examiners shall find that such applicant meets the requirements of this rule and has received from the Committee on Character and Fitness its certification of approved character, the Board shall certify to the Court that such applicant is qualified for admission on a foreign license.

SECTION VI.—*Fees of Applicants.*

1. Each applicant for admission to the Bar on examination shall pay in advance a fee of twenty dollars, and a similar fee for each subsequent examination.

2. Each applicant for admission to the Bar on a foreign license shall pay in advance a fee of one hundred dollars.

3. Each applicant for examination on preliminary education or on law office study, as provided in this rule, shall pay in advance a fee of ten dollars.

4. All fees shall be paid to the Treasurer of the Board to be held by him subject to the order of the Court.

SECTION VII.—*Foreign Attorneys in Isolated Cases.*

Anything in this rule to the contrary notwithstanding, an attorney and counselor-at-law from any other jurisdiction in the United States, or foreign country, may, in the discretion of any court of record of this state be permitted to participate before such court in the trial or argument of any particular cause in which, for the time being, he is employed.

SECTION VIII.—*Qualifications Under Prior Rules*

Applicants who commenced the study of law prior to the effective date of this rule and applicants heretofore examined and entitled to re-examination, may qualify for examination or re-examination under the provisions of the rules of this court in force at the date when they commenced the study of law.

SECTION IX.—*Committee on Character and Fitness*

1. At the November term in each year, the Supreme Court shall appoint a Committee on Character and Fitness in each of the Appellate Court Districts of this State, consisting of not less than three members of the Bar. The members of the Board of Law Examiners appointed for their respective districts shall be ex-officio members of the Committee.

2. Before admission to the Bar, each applicant shall be passed upon by the Committee in his district as to his character and moral fitness. He shall furnish the Committee with an affidavit in such form as the Board of Law Examiners shall prescribe concerning his history and environments, together with the affidavits of at least three reputable persons personally acquainted with him residing in the county in which the applicant resides, each testifying that the applicant is known to the affiant to be of good moral character and general fitness to practice law, setting forth in detail the facts upon which such knowledge is based. Each applicant shall appear before the Committee of his district or some member thereof and shall furnish the Committee such evidence of his moral character and good citizenship as in the opinion of the Committee would justify his admission to the Bar.

3. If the Committee is of the opinion that the applicant is of approved character and moral fitness, it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the Bar.

SECTION X.—*Power to Make Rules, Investigations and Subpoena Witnesses*

1. Subject to the approval of the Supreme Court, the Board of Law Examiners and the Committee on Character and Fitness shall have power to make, adopt and alter rules not inconsistent with this rule, for the proper performance of their respective functions.

2. The Board of Law Examiners and the Committee on Character and Fitness for each Appellate Court District are hereby respectively constituted bodies of commissioners of this court, who are hereby empowered and charged to receive and entertain complaints, to make inquiries and investigations, and to take proof from time to time as may be necessary, concerning applications for admission to the Bar relative to examinations given by or under the supervision of the Board of Law Examiners and relating to the character and moral fitness of applicants for admission. They may call to their assistance in such inquiries other members of the Bar and make all necessary rules and regulations concerning the conduct of such inquiries and investigations, and take the testimony of witnesses as hereinafter provided. The hearings before the Commissioners shall be private unless any applicant concerned shall request that they be public. Upon application by the Commissioners, the Clerk of this Court shall issue writs of subpoena ad testificandum, writs of subpoena duces tecum or dedimus potestatem to take depositions. Witnesses shall be sworn by any person authorized by law to administer oaths. All testimony shall be taken under oath, transcribed, and transmitted to the Court, if requested. The Commissioners shall report to this court the failure or refusal of any person to attend and testify in response to any subpoena issued as herein provided.